



Cases on Evidence

(1990-91 Edition)

Volume II

(pp. 544-1266)

Selected by Alan W. Mewett

These materials are intended for use in the Evidence
Course of Professor Mewett in the Faculty of Law of
the University of Toronto

BORA LASKIN LAW LIBRARY

APR 2 1991

FACULTY OF LAW
UNIVERSITY OF TORONTO

Cases on Evidence


(1990-91 Edition)

Volume II

(pp. 544-1266)

Selected by Alan W. Mewett

These materials are intended for use in the Evidence
Course of Professor Mewett in the Faculty of Law of
the University of Toronto



Digitized by the Internet Archive
in 2018 with funding from
University of Toronto

TABLE OF CONTENTS

<u>Statutes</u>	<u>Page No.</u>
Charter of Rights	1
Canada Evidence Act	3
Evidence Act of Ontario	17
Chapter 1, Mewett: Witnesses	33
Chapter 2, Mewett: Witnesses	70
 1. <u>Introduction</u>	
Batary v. A.G. Sask., [1965] S.C.R. 465	118
Bruno (1976), 27 C.C.C. (2d) 318	122
Pappajohn (1980), 14 C.R. (3d) 243	123
R. v. Whyte (1988), 42 C.C.C. (3d) 97	128
Oakes (1983), 2 C.C.C. (3d) 339	143
Holmes v. The Queen (1988), 41 C.C.C. (3d) 497	163
Morin v. R. (1989), 44 C.C.C. (3d) 193	180
Cloutier v. R. (1980), 48 C.C.C. (2d) 1	201
Morris (1984), 36, 36 C.R. (3d) 1	207
 2. <u>Competence, Compellability and Oaths</u>	
Gosselin (1907), 7 C.C.C. 139	219
McConnell and Beer, [1968] S.C.R. 802	223
Vezeau, [1977] 2 S.C.R. 277	227
Thomson Newspapers (1990), 76 C.R. (3d) 129	230
McKinlay Transport (1990), 76 C.R. (3d) 283	275
McLaughlin (1974), 24 C.R.N.S. 362	289
Hoskyn v. Metropolitan Police Commissioner	295
Salituro (1990), 56 C.C.C. (3d) 350	296
R. v. Walsh (1979), 45 C.C.C. (2d) 199	310
R. v. Gunewardene, [1951] 2 K.B. 600	315
Toohey v. M.P.C., [1965] A.C. 595	317
Regina v. Hawke (1975), 29 C.R.N.S. 1	321
R. v. Khan	328
Sankey v. The King (1927), 48 C.C.C. 97	348
R. v. Budin (1981), 58 C.C.C. (2d) 352	
(Ont. C.A.)	350
Kendall v. The Queen, [1962] S.C.R. 469	352
 3. <u>Refreshing Memory</u>	
McInroy and Rouse (1977), 5 C.R. (3d) 125	354
Regina v. Davey (1969), 6 C.R.N.S. 288	358
Regina v. Fraser (1990), 55 C.C.C. (3d) 557	362

4. Expert Evidence

Wilband v. The Queen, [1967] 2 C.C.C. 6	369
Regina v. Rosik (1971), 13 C.R.N.S. 129	371
Regina v. Abbey (1982), 43 N.R. 30	381
Béland v. R. (1988), 60 C.R. (3d) 1 (S.C.C.)	389
Lavallee (1990), 55 C.C.C. (3d) 97	406

5. (a) Enhancing Credibility

R. v. Clark (1984), 40 C.R. (3d) 183	428
Regina v. Kyselka, [1962] O.W.N. 164	437
Corke v. Corke, [1958] 1 All E.R. 224	439
Regina v. D.H. (199), 56 C.C.C. (3d) 343	442
R. v. B(G) (199), 56 C.C.C. (3d) 200	445

(b) Complaints in Sexual Cases

Ss. 486 (2.1), (2.2), 715.1 Criminal Code	446
R. v. Page	450

(c) Prior Statements, Consistent/Inconsistent

Welstead v. Brown, [1952] 1 S.C.R. 3	456
Regina v. Rozich (1980), 10 C.R. (3d) 364	459
Regina v. Giraldi (1975), 28 C.C.C. (2d) 248	463
Regina v. Pangilinan (1988), 60 C.R. (3d) 188.	466
Timm v. The Queen (1981), 59 C.C.C. (2d)	469
Deacon v. The King (1947), S.C.R. 531	473
McInroy & Rouse v. R., [1979] 1 S.C.R. 588	475
Wawanesa v. Hanes, [1961] O.R. 495	481
Regina v. Milgaard (1971), 14 C.R.N.S. 34	480

(d) Prior Convictions

S. 666 Criminal Code	484
Regina v. St. Pierre (1974), 17 C.C.C. (2d) 485	491
Morris v. The Queen (1979), 43 C.C.C. (2d) 129	494
Corbett v. The Queen (1988), 41 C.C.C. (3d) 385	506

(e) Prior Sexual Conduct

Sexual Offences Act ss. 276 & 277 Criminal Code	544
Green (1990), 76 C.R. (3d) 119	545
R. v. Molnar	546



(f) Psychiatric Evidence to Attack

R. v. French (1978), 37 C.C.C. (2d) 201 549

(g) Accused Attaching Own Credibility

Helpard v. R. (1979), 10 C.R. (3d) 76 554

Regina v. Dietrich (1970), 11 C.R.N.S. 129 557

(h) Hypnosis

Regina v. K. (1979), 47 C.C.C. (2d) 436 563

6. Character

Regina v. McNamara (1981) 56 C.C.C. (2d) 193 569

Guay v. The Queen (1978), 42 C.C.C. (2d) 536 577

Regina v. Taylor (1982), 35 O.R. (2d)
738 (Ont. C.A.) 579

Regina v. Glynn (1971), 15 C.R.N.S. 343 581

Regina v. Lupien (1970), 9 C.R. 165 582

Regina v. Lowery, [1973] 3 W.L.R. 235 587

Regina v. McMillan (1975), 29 C.R.N.S. 191 592

Regina v. Robertson (1975), 29 C.R.N.S. 141 597

7. Similar Fact Evidence

Criminal Code Section 312, 314(1)(b), 317, 318 599

Makin & The Attorney General for New South
Wales [1894] A.C. 57 600

Regina v. Smith (1916), 11 Cr. Ap. Rep. 229 603

Sweitzer v. The Queen (1982), 68 C.C.C. (2d) 193 604

Director of Public Prosecutions & Boardman,
[1975] A.C. 421 608

Leblanc v. The Queen (1975), 29 C.C.C. (2d) 97 612

Regina v. Straffen, [1952] 2 Q.B. 911 617

Regina v. Scopelliti (1982), 63 C.C.C. (2d) 481 620

R. v. B. (1990), 76 C.R. (3d) 1 621

8. Hearsay

(i) General

Myers v. D.P.P., [1965] A.C. 1001 647

Ares v. Venner, [1970] S.C.R. 608 652

Subramaniam, [1956] 1 W.L.R. 965 654

Wright v. Tatham (1837), 112 E.R. 488 650

Wysochan (1930), 54 C.C.C. 172 653

Wildman (1984), 14 C.C.C. (3d) 321 661

Patten, [1972] A.C. 378 671

R. v. McKinnon 1989 70 C.R. (3d) 9 675

(ii) Res Gestae

Bedingfield (1879), 14 Cox C.C. 341 681
Gilbert (1907), 38 S.C.R. 284 683
Regina v. Hodd (1970), 1 C.C.C. (3d) 363 684
Regina v. Graham (1972), 7 C.C.C. (2d) 93 688
Regina v. Newton (1976), 34 C.R.N.S. 161 689
Regina v. Risby (1977), 32 C.C.C. (2d) 242 695
Regina v. Keeler (1978), 36 C.C.C. (2d) 8 696
Regina v. Clark (1983), 35 C.R. (3d) 357 699

(iii) Statements Against Interest

Donnelly v. U.S. (1913), 228 U.S. 243 715
Regina v. O'Brien (1977), 35 C.C.C. (2d) 209 717
Regina v. Pelletier (1978), 38 C.C.C. (2d) 515 720
Lucier v. The Queen (1982), 65 C.C.C. (2d) 150 722

(iv) Statements by Children

Kahn, See p. 327, supra 328

(iv) Prior Proceedings

Criminal Code S.S. 643, 541 724
Walkerton v. Erdman (1894), 23 S.C.R. 352 725
Hollington v. Hewthorn (1943), 1 K.B. 587 728

(v) Bodily and Mental Condition

Youlden v. London Guarantee & Accident Co.
(1912), 260 L.R. 75 733
Mutual Life v. Hillmon (1892), 145 U.S. 285 735
Regina v. Wainwright (1875), 13 Cox C.C. 171 737
Rex v. Thomson, [1912] 3 K.B. 19 735
Home v. Corbeil, [1955] 4 D.L.R. 750 739
R. v. Blastland [1986] A.C. 41 741

(vi) Business Records

Regina v. Vanlergerghe (1979), 6 C.R. (3d) 222 751
Regina v. McMullen (1979), 47 C.C.C. (2d) 499 752

Civil Evidence Act (U.K.); Computer Evidence (S. Africa)	758
Wood (1983), 76 Cr. App. R. 23	759

9. Confessions and Pre-Trial Statements

(i) General

Piché v. The Queen (1971), S.C.R. 23	762
--------------------------------------	-----

(ii) Persons in Authority

Regina v. Towler (1968), 5 C.R.N.S. 55	765
Regina v. Pettipiece (1972), 18 C.R.N.S. 236	766
Rothman v. The Queen (1981), 1 S.C.R. 640	770
Regina v. Collins (1976), 29 C.C.C. (2d) 304	773

(iii) Common Law - Voluntariness

Ibrahim v. The King, [1941] A.C. 599	775
Boudreau (1949), 94 C.C.C. 1	778
Horvath v. The Queen (1979), 44 C.C.C. (2d) 385	795
Ward v. R. (1979), 7 C.R. (3d) 153	803

(iv) Common Law - Voir Dire

Powell v. The Queen (1976), 33 C.R.N.S. 323	806
Erven v. R. (1979), 6 C.R. (3d) 97	808
Regina v. Price (1981) 59 C.C.C. (2d) 367 (Ont. Co. Ct.)	819
Park v. The Queen (1981), 59 C.C.C. (2d) 385 (S.C.C.)	821

(vii) Charter Cases - Counsel and Waiver

Clarkson v. R (1988) 50 C.R. (3d) 289	825
R. v. Manninen (1987) 34 C.C.C. (3d) 385	832
R. v. Brydges (1990) 53 C.C.C. (3d) 330	838
R. v. Strachan (1988), 67 C.R. (3d) 87	852
R. v. Leclair (1989), 67 C.R. (3d) 209	870

(viii) Charter - Trickery/Right to Silence

R. v. Rothman (1981), 35 N.R. 485	879
R. v. Emile (1988), 42 C.C.C. (3d) 408	892
R. v. Woolley (1988), 40 C.C.C. (3d) 193	903
Regina v. Logan et al. (1989), 43 C.C.C. (3d) 567	911

R. v. Hebert (1990), 77 C.R. (3d) 145 934

(ix) Compulsory Statements

Marshall v. The Queen] [1961] S.C.R. 123 966

R. v. Sutherland (1990), 55 C.C.C. (3d) 265 972

(x) Truth of Confessions

R. v. De Clerq, [1968] S.C.R. 902 982

R. v. Wong Kam-Ming, [1979] 2 W.L.R. 81 986

(xi) Confirmation by Subsequent Facts

R. v. St. Lawrence (1949), 93 C.C.C. 376 991

R. v. Wray (1970), 11 C.R.N.S. 235 994

(xii) Use of Voir Dire Evidence at Trial

R. v. Van Dongen (1975), 31 C.R.N.S. 1002

R. v. Gauthier 1004

R. v. Magdich, Bennett & Sweet (1978 41 C.C.C. (2d) 392 1007

R. v. Brophy (1981), 2 All E.R. 705 1005

R. v. Tarrant (1982), 63 C.C.C. (2d) 385 1011

Dubois (1986), 22 C.C.C. (3d) 513 1013

(xiii) Adopted Statements and Silence

Chapdelaine v. The King (1935, 63 C.C.C. 5 1032

Regina v. Eden, [1970] 3 C.C.C. 280 1033

R. v. Sweeney (No. 2) (1977), 35 C.C.C. (2d) 245 1035

R. v. Christie, [1914] A.C. 545 1038

R. v. Sayegh (No. 3) (1982), 69 C.C.C. (2d) 84 1040

(xiii) Consciousness of Guilt and Lies

R. v. Burdick (1975) 27 C.C.C. (2d) 497 1043

Sparrow v. R. (1979), 12 C.R. (3d) 158 1046

(xiv) Conditional Admissibility

R. v. Carter (1982), 67 C.C.C. (2d) 568 1048

(xv) Guilty Plea

R. v. Dietrich (1970) 11 C.R.N.S. 22	1052
R. v. Pentiluk & MacDonald (1975), 28 C.R.N.S. 324	1055

10. Admissions

Yorkton v. Morley (1967), 66 D.L.R. (2d) 37	1056
Strand Electric Ltd. [1969] 2 C.C.C. 264	1058

11. Privilege

Dubois (supra)	1010
Slavutych v. Baker (1977), 38 C.R.N.S. 306	1060
Shenton v. Tyler [1939] 1 Ch. 620	1065
Rumping v. Director of Public Prosecutions	1067
Regina v. St-Jean (1976), 34 C.R.N.S.	1069
R. v. Jean and Piesinger, 7 C.R. (3d) 333; (1980) 16 C.R. (3d) 193	1071
Lloyd and Lloyd v. The Queen, 64 C.C.C.(2d) 169	1073
Reference re Legislative Privilege (1978), 39 C.C.C. (2d) 222	1075
Solicitor General v. Royal Commission (1982), 62 C.C.C. (3d) 513	1079

12. State Secrets

Dubois v. R. (1986) 22 C.C.C. (3d) 513	1083
Duncan v. Cammell, Laird, [1942] A.C. 624	1092
Conway v. Rimmer, [1963] A.C. 910	1095
Mannix (1982), 126 D.L.R. (3d) 155	1100
Re Goguen (1982) 10 C.C.C. (3d) 492	1103
Carey v. The Queen (1987), 30 C.C.C. (3d) 498	1115

13. Illegally Obtained Evidence

(i) Common Law

Kuruma [1955], A.C. 197	1138
Sang [1980], A.C. 402	1139

(ii) Charter Cases

Hunter v. Southam, (1984) 14 C.C.C. (3d) 97	1143
Collins, (1987) 33 C.C.C. (3d) 1 (S.C.C.)	1154
Therens, (1985) 45 C.R. (3d) 97	1164
Strachan, (1989), 46 C.C.C. (3d) 479	1182

14. Corroboration

Criminal Code Section 274	1194
Baskerville, [1916] 2 K.B. 658	1194
Ethier, [1959] O.R. 533	1196
Warkentin (1976), 30 C.C.C. (2d) 1	1199
Vetrovec (1982), 67 C.C.C. (2d) 1	1203
Paquette v. Chubb (1989), 65 O.R. (2d) 321	1213
R. v. B.(G) (1990), 56 C.C.C. (3d) 161	1222

15. Real Evidence

Yachuk v. Blais, [1944] O.W.N. 412	1237
Draper v. Jacklyn, [1968] 2 O.R. 683	1238

16. Judicial Notice

Varcoe v. Lee, [1944] O.W.N. 412	1241
----------------------------------	------

17. Miscellaneous Problems in the Trial Process

Cooper, (1977) 34 C.C.C. (2d) 18	1245
LeMay, [1952] 1 S.C.R. 232	1251
Browne v. Dunn, (1893) 6 R. 67	1255
Dyck, [1970] 2 C.C.C. 283	1257
Mete, (1973) 22 C.R.N.S. 387	1258
Angelantoni, (1975) 31 C.R.N.S. 342	1261
Dobberthien, (1973), 13 C.C.C. (2d) 513	1262
Sparre, (1978) 37 C.C.C. (2d) 495	1266

